

**STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION**

Amend Section 164  
Title 14, California Code of Regulations  
Re: Harvesting of Herring Eggs

- I. Date of Initial Statement of Reasons: May 11, 2002
- II. Date of Pre-adoption Statement of Reasons: July 29, 2002
- III. Date of Final Statement of Reasons: September 3, 2002
- IV. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: June 20, 2002  
Location: South Lake Tahoe, CA
  - (b) Discussion Hearing: Date: August 2, 2002  
Location: San Luis Obispo, CA
  - (c) Adoption Hearing: Date: August 30, 2002  
Location: Oakland, CA
- V. Update:

No modifications were made to the originally proposed language in the Initial Statement of Reasons.

The Fish and Game Commission approved all proposed regulatory changes contained herein at its meeting in Oakland on August 30, 2002.
- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

No public comments, written or oral, were received during the public comment period.
- VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814
- VIII. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: See Draft Supplemental Environmental Document - Pacific Herring Commercial Fishing Regulations.
- (b) No Change Alternative: See Draft Supplemental Environmental Document - Pacific Herring Commercial Fishing Regulations.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed action is based on regulations that are already in place. The average quota over the history of the herring eggs on kelp fishery in San Francisco Bay (13 seasons) is 111.6 tons per season (all individual quotas combined). The proposed quota is significantly less than the long-term average, and thus, in comparison to the long term average, will have a negative economic impact on individual fishermen in the short term. However, there is no guarantee that the quota will be caught; the herring eggs on kelp season quota has only been reached in three seasons (97.4, 99.7 and 100 percent of the quota was harvested in the 1989-90, 1993-94 and 1995-96 seasons, respectively). When compared to last season's catch of 45.3 tons, the proposed 57.6 ton herring eggs on kelp quota (derived from the 3,540 ton quota for San Francisco Bay) would represent a 27 percent increase. The proposed decrease in the San Francisco Bay quota (compared to the 2001-02 season quota) may have a significant, but unquantifiable, negative impact on the buyers of herring eggs on kelp and possibly on some business that provide goods and services to the

permittees. In the long term, there is a balance between seasons when resource abundance and fishing quotas are low and seasons when resource abundance and finishing quotas are high.

The proposed corrections in the citations of sections of the Fish and Game Code or Title 14 are being made for the sake of clarity and will not have an economic impact.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

## Updated Informative Digest (Policy Statement Overview)

Under existing law, herring eggs on kelp (HEOK) may be taken for commercial purposes only under a revocable, nontransferable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permit limitations; season; fishing area; permittee categories and qualifications; permit conditions; royalty fees; permit application procedures; permit performance deposit requirements; gear, fishing and harvesting restrictions; fishing quotas; landing and processing requirements; and permit suspension conditions and procedures. In addition, current regulations limit the number of permits that can be issued.

The proposed regulatory changes will establish fishing quotas for the 2002-03 herring eggs on kelp fishing season. Individual herring eggs on kelp quotas will depend on the total herring fishery quota for San Francisco Bay established by the Fish and Game Commission under Section 163, Title 14, CCR. The proposed 2002-03 total herring fishery quota for San Francisco Bay is 3,540 tons (10 percent of the estimated spawning biomass for the 2001-02 season); this results in a 6.2-ton individual herring eggs on kelp quota for a "CH" permittee and a 1.8-ton individual quota for a non-"CH" gill net permittee. These represent a decrease in individual quotas of 24 percent for a "CH" gill net permit from the 2001-02 season quota (7.9 tons), and 14 percent for a non-"CH" gill net permit from the 2001-02 season quota (2.1 tons).

Other changes are recommended to provide for the efficient operation and orderly conduct of the fishery, improve the clarity of the regulations and for the protection of the resource. The following is a summary of those proposed changes.

- Modify Subsection (j) Method of Take to describe the area a line used for HEOK fishing may occupy as a line length rather than a square foot area.
- Clarify the description of a line used in HEOK fishing by omitting the word "continuous" from the description of a line in Subsection (j) Method of Take.

Minor editorial changes in language and form references are proposed to correct or clarify the existing regulatory language.

**The Fish and Game Commission approved the proposed regulatory changes contained herein at its meeting in Oakland on August 30, 2002.**

**PROPOSED REGULATORY CHANGES TO SECTION 164, TITLE 14, CCR:  
HARVEST OF HERRING EGGS**

(a) Herring eggs may be taken for commercial purposes only under a revocable, nontransferable permit issued by the department. A department-issued copy of the permit shall be aboard each vessel harvesting, processing or transporting herring eggs under the authority of the permit. The permittee or his/her authorized agent shall be aboard any vessel that is harvesting, processing or transporting herring eggs under the authority of the permit. The permit shall list the names of all authorized agents and all vessels used for harvesting, processing or transporting herring eggs under the authority of the permit (This includes the attachment of any changes approved by the department after the permit is issued).

(b) Herring eggs may be harvested only from the waters of San Francisco Bay. The harvest season is December 1 to March 31.

(c) For purposes of this section, San Francisco Bay is defined as the waters of Fish and Game districts 11, 12, 13 and that part of district 2 known as Richardson Bay.

(d) No more than 11 permits may be issued under the provisions of these regulations. No new permits shall be issued until the maximum number of permits is less than 10. The commission will review and determine annually whether further action, other than permit attrition, is deemed necessary to achieve a reduction to 10 permits.

(e) Fishing, Harvesting, and Processing Defined. Unless the context requires otherwise, the following definitions shall apply to the herring eggs on kelp fishery:

(1) "Fishing" means the act of suspending giant kelp (*Macrocystis pyrifera*) for the purposes of taking herring eggs, and/or the subsequent act of removing herring eggs on kelp from the water for the purposes of transport or harvest. Any person engaged in fishing shall possess a commercial fishing license pursuant to Section 7850 of the Fish and Game Code.

(2) "Harvesting" means the act of removing herring eggs on kelp from the water for the purposes of processing for sale and/or transport to market. Any person engaged in harvesting shall possess a commercial fishing license pursuant to Section 7850 of the Fish and Game Code.

(3) "Processing" means the act of separating or removing kelp blades (with herring eggs attached) from the stipe of harvested herring eggs on kelp, and loading the processed blades into bins or totes. Any person engaged in, or employed for the specific purpose of, processing herring eggs on kelp shall fall under the category of nonapplicability in regard to possession of a commercial fishing license pursuant to Section 7850.5 of the Fish and Game Code. Pursuant to Section 7850.5 of the Fish and Game Code, a person engaged in processing (permittees and authorized agents excepted) may stand aboard a herring eggs on kelp vessel while at a dock or landing, but any not be transported aboard the vessel. A person engaged in processing (permittees and authorized agents excepted) may not stand on the herring eggs on kelp raft, nor physically participate in the removal of herring eggs on kelp from the water.

(f) Permits. Permits shall be issued in two categories:

(1) Prior permittee. Permits shall be issued to all prior permittees. A prior permittee is defined as a person who has:

(A) met the requirements under subsection (g) of these regulations, and

(B) suspended kelp for herring eggs on kelp fishing during the immediately preceding herring eggs on kelp season.

(2) New permittee. A new permittee is defined as any applicant who held a herring

permit issued pursuant to Section 163 of these regulations during the preceding herring season, but does not qualify as a prior permittee as defined above. The total number of permits available to new permittees shall be the difference between the 10 permit limit and the number of permits issued to individuals qualifying as prior permittees. In the event that the number of eligible applicants qualifying for new permits exceeds the number of available permits, a lottery shall be held.

(g) Permit conditions: Every person operating under a permit to harvest herring eggs shall:

(1) Forfeit his or her herring fishing privileges authorized pursuant to Section 163 of these regulations during the same season.

(2) In addition to any license fees required by the Fish and Game Code, pay a royalty of \$500 per ton of herring eggs on kelp taken. (The royalty fee shall include the landing tax imposed pursuant to Article 7.5, (commencing with Section 8040) Chapter 1, Part 3, Division 6, of the Fish and Game Code, and the royalty fee required for the harvesting of kelp pursuant to Section 165, Title 14 CCR).

(3) Submit a Herring-Eggs-on-Kelp Monthly Landings and Royalty Report (FG 143 HR (Rev. 5/01), which is incorporated by reference herein (available at the department's San Francisco Bay Area Marine Region office), with payment due to the department's San Francisco Bay Area Marine Region office for each month of the season, within 60 days after the close of the month for which it is due.

(h) Permit applications. Each applicant for a herring eggs on kelp permit shall:

(1) Completely fill out and submit the required department Herring-Eggs-on-Kelp Permit Application (FG 1406 (4/992/02)), which is incorporated by reference herein (available at the department's San Francisco Bay Area Marine Region office), for the season to which the application applies. No person shall submit more than one application per season. Applications shall include a performance deposit as specified in subsection (i), and shall be delivered to the department's San Francisco Bay Area Marine Region office or postmarked no later than 5 p.m. on August 1 of each year.

(2) Applications postmarked or presented after August 1 and before September 1 will result in a monetary penalty of \$200 plus \$50 for each state working day, or portion thereof, that the application is late, for a period of 30 days. Applications postmarked or presented after August 31 will not be eligible for renewal.

(3) Have submitted all fees from prior seasons.

(i) Each application shall include a performance deposit equal to 50% of the royalty price for the permit (i.e., allotment). The deposit shall be credited to the amount payable by the successful applicants and shall not be refundable. The performance deposit shall be returned to an applicant who does not qualify for a permit.

(j) Method of Take. Herring eggs may only be taken by harvesting giant kelp (*Macrocystis* sp.), with spawn (i.e., eggs) attached, which has been artificially suspended using the following two methods: rafts and/or lines, a technique commonly known as the "open pond" method. For the purpose of this Section, a raft is defined as a temporary, mobile structure with a metal, wood or plastic frame. The total surface area of each raft is not to exceed 2,500 square feet. Rafts used by a licensed herring eggs on kelp permittee, prior to the 1995-96 season, are exempt from these size specifications. Such rafts may not be modified to exceed 2,500 square feet total surface area. Any new raft built after the 1995-96 herring eggs on kelp season must meet the specified dimensions. A line is defined as a continuous piece of line of no more than 1200 feet in overall any length that is suspended under a suitable permanent structure (e.g., pier or dock), or between two permanent structures (e.g., piers or docks). Each end of the line must be attached to a permanent structure. ~~The total surface area that each line may~~

~~occupy is not to exceed 2,500 square feet.~~ Kelp lines suspended from a permanent structure (e.g., pier or dock) shall not be placed as to hinder navigation. If kelp lines are suspended under a permanent structure (e.g., pier or dock), or if a raft is tied up to a permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), the permittee shall obtain prior written approval from the appropriate owners or controlling agency (e.g., wharfinger, Coast Guard, Navy or private owner). Buoys are not permanent structures.

(1) Not more than two rafts and/or two lines may be used per permit. Two permits may be simultaneously fished on the same raft if each line on the raft is clearly identified with the permit number of the owner. Each raft shall have a light at each corner that may be seen for at least a distance of 100 yards. Each raft shall be further identified with the herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently affixed to the raft. Lines shall be marked at the beginning and the end with a light that may be seen for at least a distance of 100 yards. Each line shall be further identified with the herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background, permanently affixed to the line.

(2) Not more than ten sets of test kelp may be used per permit. Test kelp is defined as one stipe with blades, attached to a length of line for the purpose of testing for spawning activity. A set is defined as one length of line with test kelp attached. Each set must be attached to a permanent structure (e.g., pier, dock) and marked with the herring eggs on kelp permit number, in Roman alphabet letters and Arabic numerals at least 3 inches high, at a point above the waterline. No herring eggs on kelp shall be retained from test kelp sets for testing purposes that have not been weighed and recorded, pursuant to subsection 164(k).

(3) Rafts and/or lines may not be placed in any waters or areas otherwise closed or restricted to the use of herring gill nets operating pursuant to Section 163 of these regulations, except where written approval is granted by the owners or controlling agency (e.g., Navy, Coast Guard). Rafts and/or lines may be placed in Belvedere Cove or Richardson Bay, only if permittees tie their rafts and/or lines to a permanent structure (e.g., pier, dock or rock wall, natural stationary shoreline structures), and obtain prior written approval. Buoys are not permanent structures.

(4) The total amount of herring eggs on kelp that may be harvested by each permittee shall be based on the previous season's spawning population assessment of herring in San Francisco Bay, as determined by the department. This assessment is used to establish the overall herring fishing quotas pursuant to Section 163 of these regulations. The total amount of herring eggs on kelp that may be harvested by an individual possessing a gill net permit issued pursuant to Section 163 of these regulations shall be ~~2-41.8~~ tons per season. The total amount of herring eggs on kelp that may be harvested by an individual possessing a "CH" permit issued pursuant to Section 163 of these regulations shall be ~~7-96.2~~ tons per season.

(5) Each vessel operating under or assisting in fishing operations under a permit issued pursuant to these regulations shall have a current Fish and Game commercial boat registration and be further identified with the permittee's herring eggs on kelp permit number in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently affixed to each side of the vessel. If a herring eggs on kelp vessel is also used as an assist vessel in another permittee's fishing operation, it must be identified with the number of the permit it is assisting.

(6) The permittee shall notify the department's San Francisco Bay Area Marine Region office in writing with the name and registration number of any vessel that will be used for

harvesting, processing or transporting herring eggs under the authority of the permit. The permittee shall provide a copy of the current California certificate of boat registration with the permittee's written notification. The permittee shall receive written approval from the department before using a vessel for harvesting, processing or transporting herring eggs.

(7) Permittee shall notify the department's San Francisco Bay Area Marine Region office at the telephone number designated on the herring eggs on kelp permit within a 4-hour period prior to the suspension of kelp on a raft and/or lines and supply the following information:

(A) Where the kelp suspension will take place; and

(B) Where the permittee plans to fish the rafts and/or lines; and

(C) A local fax number or mailing address where confirmation of kelp suspension notification can be sent.

(k) Harvesting, Landing and Processing Requirements. Every person who harvests, receives, processes or wholesales herring eggs shall comply with the following requirements.

(1) Obtain all appropriate commercial fish business licenses and permits required by Fish and Game Code sections 8030-8038.

(2) Permittee shall notify the department's San Francisco Bay Area Marine Region office at the telephone number designated on the herring eggs on kelp permit a minimum of 12 hours prior to harvesting herring eggs on kelp on a weekday and supply the following information: description and point of departure of the vessel used; the exact location of each raft and/or line and estimated time of beginning of each operation; and if harvesting occurs, the point of landing and time of landing or off-loading of the herring eggs on kelp harvested. If any of this information changes after notification is given, the permittee shall again notify the department at the telephone number designated on the herring eggs on kelp permit.

(3) Herring eggs on kelp may be harvested any time on weekdays, but shall not be off-loaded between the hours of 10:00 p.m. and 6:00 a.m.

(4) Herring eggs on kelp may be harvested on Saturdays and Sundays at any time if the permittee reimburses the department for the cost of operations. The department shall submit a detailed invoice of its cost of operations within 30 days of providing the services. Permittee shall remit payment to the department within 30 days of the postmark date of the department's invoice. Permittee shall notify the department at the phone number designated on the herring eggs on kelp permit, during normal business hours (between 8:00 a.m. and 5:00 p.m., Mondays through Friday) prior to harvesting herring eggs on kelp on Saturday or Sunday, and shall supply the following information:

(A) Description and point of departure of the vessel used.

(B) The exact location of each raft and estimated time of the beginning of the harvesting operation, the estimated time of off-loading of the harvested product, and the point of off-loading.

(C) A local telephone number of the permittee for the immediate confirmation or clarification of the information required in subsection 164(k)(4).

(5) Permittee shall have a certified scale aboard the vessel at all times if any processing operations are conducted aboard that vessel. This scale shall be used to determine the total weight of herring eggs on kelp prior to processing. For the purposes of this section, all portions of the kelp blade, including all trimmed-off portions (trim), shall be considered part of the harvested product and included in the total weight of herring eggs on kelp. The stipe and pneumatocyst shall not be considered a part of the harvested product; therefore, the weight of the stipe and pneumatocyst shall not be considered in



determining the total weight of herring eggs on kelp.

(6) All bins or totes shall be permanently marked with individualized serial numbers, beginning with the prefix CA, and predetermined tare weights (including lids). The serial number and predetermined tare weight shall be permanently marked in letters and numerals at least 3 inches high on each side of the bin or tote.

(7) Prior to weighing herring eggs on kelp, each receiver of herring eggs on kelp shall have a scale currently certified and sealed by the County Division of Weights and Measures.

(8) Weight tally sheets and a landing receipt shall be immediately completed upon the landing and weighing of any single permittee's boat load of harvested herring eggs on kelp (hereinafter "load").

(A) The landing receipt for each herring eggs on kelp permittee shall be completed and signed by the permittee prior to commencing unloading operations of another permittee's load.

(B) The landing receipt for each load shall include all information required by Fish and Game Code Section 8043. Tally sheets shall indicate the serial number, the tare weight of the bin or tote, the net weight of the product (eggs on kelp), excluding the salt and brine and the gross weight of each bin or tote. Filled bins or totes shall be weighed when landed on-shore, or before they are moved from the premises if processing takes place on-shore. The weight tally sheet shall be retained by the permittee for one year and shall be available at all times for inspection by the department. All herring eggs on kelp landed in excess of any established permit quota shall be forfeited to the department by the signing of an official Release of Property form (~~Form MRR/WLP~~ ~~revised 10/93~~ FG-MR-674 (Rev. 5/02)), which is incorporated by reference herein). Such excess of herring eggs on kelp shall be sold or disposed of, and the proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.

(9) There shall be no landing or off-loading of herring eggs on kelp from a permittee's vessel, from 10:00 p.m. Friday to 6:00 a.m. Monday, unless processing operations are conducted at a shore-based facility. If processing occurs on-shore, the permittee shall notify the department's designated contact 12 hours prior to the shipping or removal of the bins or totes from the premises.

(l) These regulations and all sections of the Fish and Game Code pertaining thereto shall be set forth in all permits. Permits shall be issued upon the conditions contained in the application and signed by the applicant that he has read, understands, and agrees to be bound by all terms of the permit.

(m) A permit may be suspended by the Department of Fish and Game for breach or violation of the terms of the permit by the permittee, or any other person(s) operating under the terms of the permit. Any such suspension may be appealed to the Fish and Game Commission pursuant to section 746 of these regulations.

(n) Authorized agents. Each herring eggs on kelp permittee may designate two authorized agents to operate under his or her permit. To designate an authorized agent, the permittee shall submit to the department's San Francisco Bay Area Marine Region office a completed, signed Authorized Agent Form (MRD 164 (8/97)) which is incorporated by reference herein. A permittee may replace an authorized agent by submitting a new Authorized Agent Form to the department's San Francisco Bay Area Marine Region office. A copy of the current California commercial fishing license for each authorized agent shall be submitted with each Authorized Agent Form. A person designated on the Authorized Agent Form shall act as an authorized agent only after the permittee has received written approval from the department. An authorized agent:

(1) May serve in the place of the permittee for all fishery activities requiring the

presence or action of the permittee, including the signing of landing receipts;

(2) Shall possess a current California commercial fishing license;

(3) Shall not be another herring eggs on kelp permittee unless the other permittee has stopped fishing his or her permit for the season;

(4) Who does not hold a herring eggs on kelp permit, may act as an authorized agent for more than one herring eggs on kelp permittee.

NOTE

Authority cited: Sections 5510, 8389, 8553 and 8555, Fish and Game Code. Reference: Sections 7850, 7850.5, 8043, 8053, 8389 and 8550-8556, Fish and Game Code.